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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/579,535	05/16/2006	Takashi Mori	Q94763	8478

65565 7590 12/23/2010

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2100 PENNSYLVANIA AVE. NW
WASHINGTON, DC 20037-3213

EXAMINER	
STULII, VERA	
ART UNIT	PAPER NUMBER
1781	

NOTIFICATION DATE	DELIVERY MODE
12/23/2010	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary	Application No.	Applicant(s)	
	10/579,535	MORI ET AL.	
	Examiner	Art Unit	
	VERA STULII	1781	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *20 April 2010*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *6-8 and 10* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *6-8 and 10* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 06/30/2010 has been entered.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 10 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 10 is rendered indefinite for the following recitation “has a water-rehydration property that is 3 or more of the wet weight/dry weight ratio, wherein the wet weight is the weight of the food upon three minutes of reconstitution with hot water”. It is not clear, what exactly is the water retention property and how is it measured in comparison to the weight of the product. Clarification or correction is required. The claim appears to be a literal translation into English from a foreign document and is replete with idiomatic errors.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 6-8 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kato (JP 59-113871) in view of Okada (US 4,559,236) hereinafter Okada'236 and Okada (US 4,880,654) hereinafter Okada'654.

In regard to claims 6-8 and 10, Kato teaches a process for producing fibrous fish meat-bound product by mixing fibrous fish meat with fish meat paste (Abstract). Kato discloses blending seasoned ground fish meat (i.e. fish paste) with denatured fish, making the blend elastic, followed by heating it (Abstract). Kato discloses grinding fish meat with salt to create a fish-paste product and further mixing with 10-90% of denatured and ground fibrous fish meat (Abstract).

Kato is silent as to the particular method of denaturation of fish meat to produce fibrous product. Okada'236 discloses the acid treatment as a denaturation process (Col. 3 lines 63-Col. 4 line 19). Okada further discloses that pH of the denatured fish product could be adjusted to neutralize the remaining acid by treatment with alkaline solution (Col. 4 lines 35-40). It is noted that the pH range for neutralization is in the range as recited. For example, pure water is said to be neutral, with a pH close to 7.0 and 25º C. Therefore, neutralization, in this context, means adjusting pH to the value of around 7, which is in the range as recited. Okada further discloses forming desired shapes of denatured particles by molding and further heating (Col. 4 lines 41-50). In regard to the particle size of fibrous fish material, Okada discloses extruding fish meat noodles from a

nozzle having plate perforations of about 1 mm diameter into the shapes of fibers (Col. 5 lines 42-45). Therefore, Okada discloses fish fibers having a diameter around 1 mm.

Kato and Okada'236 are silent as to the preparation of the dried product. However, Okada '654 discloses mixing fibrous fish particles with fish paste, spreading the mixture into thin sheet, drying with hot air until the moisture content is reduced to 25 % (Col. 6-7 Example 7).

Taking in consideration teaching of the references as cited above, one of ordinary skill in the art would have been motivated to modify Kato in view of Okada'236 and to employ conventional method of acid denaturation as taught by Okada'236. One of ordinary skill in the art would have been motivated to do so, since Kato discloses the use of denatured fish, and Okada'236 provides the method of fish denaturation. One of ordinary skill in the art would have been further motivated to modify Kato in view of Okada'654 and to further dry blended fish product to reduce the moisture content in order to create dried fish product as taught by Okada'654. One of ordinary skill in the art would have been motivated to do so, in order to provide a new fish product having good qualities such as appearance, texture and eating qualities as taught by Okada '654 (Col. 7 lines 4-6). One of ordinary skill in the art would have been further motivated to do so, since dried fish products were well known and widely available at the time of the Applicants' invention.

In regard to the recitation of fish meat-bound food used after rehydration with hot water in the preamble of the claims, it is noted that this recitation does not exclude consumption of the fish food in a dry state. The recited phrase is merely an intended

use recitation. The recitation does not necessarily require rehydration with hot water, rather suggests that dry food product is capable of rehydrating with hot water. Further in this regard, it is noted that a dried food product, in general, could be rehydrated by addition of hot water to a dried product. The decision to consume a rehydrated dried product as opposed to the non-rehydrated dried product is a matter of personal choice of the consumer. It is not seen how the intended use of the dried product distinguishes over the prior art method. It is further noted that claims are directed to the method of production of dried fish meat-bound food, where the step of rehydration was not positively recited.

Regarding the water rehydration property recitation in claim 10, it is noted that although the references do not specifically disclose every possible quantification or characteristic of its product, such as rehydration property, this characteristic would have been expected to be as claimed absent any clear and convincing evidence and/or arguments to the contrary. The combination of references disclose the same starting materials and methods as instantly (both broadly and more specifically) claimed, and thus one of ordinary skill in the art would recognize that the rehydration property among many other characteristics of the product obtained by referenced method, would have been an inherent result of the process disclosed therein. The Patent Office does not possess the facilities to make and test the referenced method and product obtain by such method, and as reasonable reading of the teachings of the references has been applied to establish the case of obviousness, the burden thus shifts to applicant to demonstrate otherwise.

Response to Arguments

Applicant's arguments filed 02/26/2010 have been fully considered but they are not persuasive.

In response to Applicants' arguments regarding rejection of claims under 35 U.S.C. 112, second paragraph, Applicants are referred to the rejection as stated above. This rejection was necessitated by the amendment of claim 10 submitted 02/26/2010.

In response to Applicants' arguments regarding mixing ratio, adjustment of pH and diameter of fibers (page 7 of the Reply), Applicants are referred to the rejection as stated above. In particular, Kato discloses grinding fish meat with salt to create a fish-paste product and further mixing with 10-90% of denatured and ground fibrous fish meat (Abstract). Okada further discloses that pH of the denatured fish product could be adjusted to neutralize the remaining acid by treatment with alkaline solution (Col. 4 lines 35-40). It is noted that the pH range for neutralization is in the range as recited. For example, pure water is said to be neutral, with a pH close to 7.0 and 25º C. Therefore, neutralization, in this context, means adjusting pH to the value of around 7, which is in the range as recited. Okada further discloses forming desired shapes of denatured particles by molding and further heating (Col. 4 lines 41-50). In regard to the particle size of fibrous fish material, Okada discloses extruding fish meat noodles from a nozzle having plate perforations of about 1mm diameter, into the shapes of fibers (Col. 5 lines 42-45). Therefore, Okada discloses fish fibers having a diameter around 1 mm.

In response to Applicants' arguments regarding water rehydration property, Applicants are referred to the rejections as stated above.

Applicant's arguments with respect to the Nishimura reference have been considered but are moot in view of the new ground(s) of rejection (page 8 of the Reply).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to VERA STULII whose telephone number is (571)272-3221. The examiner can normally be reached on 7:00 am-3:30 pm, Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached on (571) 272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Vera Stulii/
Examiner, Art Unit 1781